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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/808,567	03/14/2001	Paul John Seakins	1171/39258/92	3910

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EXAMINER

DAWSON, GLENN K

ART UNIT PAPER NUMBER

3761

DATE MAILED: 12/08/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/808,567

Applicant(s)

SEAKINS ET AL.

Examiner

Glenn K Dawson

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-5, 7-16, 33 and 36-59 is/are pending in the application.
- 4a) Of the above claim(s) 45-47 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-5, 7, 9, 11, 13, 14, 16, 49 and 51-58 is/are allowed.
- 6) ☒ Claim(s) 15, 33, 36-44 and 59 is/are rejected.
- 7) ☒ Claim(s) 8, 10, 12, 48 and 50 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☒ None of:  
1. ☒ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 21 6) ☐ Other:

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***Election/Restrictions***

This application contains claims directed to the following patentably distinct species of the claimed invention: I-fig. 2; II-fig. 3; III-fig. 4; IV-fig. 5; V-fig. 6; VI-fig. 7; VII-fig. 8; VIII-fig. 9; IX-fig. 11; and X-fig. 12.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claim is generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over

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the prior art, the evidence or admission may be used in a rejection under 35

U.S.C. 103(a) of the other invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

The present application is an RCE of 09/808,567. On 11-25-03, the examiner telephoned Linda Palomar and reiterated the previous election of species in the parent case. Attorney Palomar indicated that the previous election without traverse of Species shown in Fig.1 in Paper No. 12 would be reprised.

Claims 45-47 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 12.

### ***Claim Objections***

Claims 8,10,12,15,48,50 and 59 are objected to because of the following informalities:

In claim 8, a transitional phrase is missing.

In claims 10 and 12, it is unclear how two separate sensors can make up the1 humidity sensor claimed in claim 1.

In claim 15, "humidity sensing means" needs to be changed to –humidity sensor—to be consistent with claim 1, as amended.

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In claim 48, the phrase "at lease one at one point" is vague and confusing claim language.

In claim 50, the use of "said outlet" is objected to lacking a previous recitation of such.

In claim 59 line 15, "configure" should be changed to —configured— in order to be grammatically correct.

Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 15,33 and 36-44 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 15, there is no antecedent basis for "said temperature sensor".

Claims 33 and 36-44 all depend from now canceled claims.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 59 is rejected under 35 U.S.C. 102(b) as being anticipated by Yoshikazu-092342-47.

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Yoshikazu discloses a respiratory device with a humidifier wherein the humidifier has a chamber 6a, an inlet 2a, an outlet 2b, a 1<sup>st</sup> temperature sensor 7, a 2<sup>nd</sup> temperature sensor 10 and a humidity sensor 11. A controller 8 receives inputs from the set humidity and temperature parameters and the sensors in order to control both the heating plate 6b and the tubing heater 9. The controller calculates the absolute humidity of the gas being delivered to the patient and uses the inputs from the sensors to reduce humidity in the conduits by comparing the absolute humidity with the set absolute humidity and the absolute volume of saturated vapor, compares the temperatures at the two sensor locations and provides appropriate power to the two heaters to provide the required gas humidity and temperature while minimizing condensation within the breathing conduit.

Claim 59 is rejected under 35 U.S.C. 102(b) as being anticipated by Gradon, et al.-EP 0 885 623 A2

Gradon discloses a respiratory humidification system having a humidifier with a chamber 4, an inlet 3, an outlet 12, inspiratory conduit 14, a heating wire in the conduit 15, a controller 11, a chamber heater 9, a temperature probe 17 near the outlet to the patient and a temperature probe 18 near the outlet of the chamber. The controller accepts inputs from the probes and acts to provide breathing gas to the prescribed temperature and humidity levels while minimizing condensation within the breathing conduit.

***Allowable Subject Matter***

Claims 1-5,7,9,11,13,14,16,49 and 51-58 are allowed.

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Claims 33 and 36-44 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

Applicant's arguments with respect to the rejected claims have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Glenn K Dawson whose telephone number is 703-308-4304. The examiner can normally be reached on M-Th 7:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on 703-308-1957. The fax phone number for the organization where this application or proceeding is assigned is 703-305-3590.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.



Glenn K Dawson  
Primary Examiner  
Art Unit 3761

Gkd  
25 November 2003